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22 December 2010

Mr Tom Leuner
General Manager
Markets Branch
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

By email: AERInquiry@aer.gov.au

Dear Mr Leuner

AER Consultation – Retail Market Performance Reporting

AGL Energy Limited (**AGL**) welcomes the opportunity to provide comments on the *Position Paper: Retail Market Performance Reporting* (the **Position Paper**) published by the Australian Energy Regulator (**AER**) in November 2010.

We do not propose to repeat all of the points we have previously raised in response to the AER's approach to retail market performance reporting. Rather, this submission focusses on those issues which remain of primary concern to us:

- the consultative process (in particular, the approach to hardship);
- the proposed frequency of reporting; and
- the collection of certain data without a compelling reason.

A summary of AGL's key concerns is provided in Attachment A.

With respect to process, AGL is disappointed with the AER's approach to date. For example it is still not clear to us how the AER will interpret some of the data it proposes to collect. We are concerned that data relating to hardship indicators and debt levels, in particular, may be misinterpreted and could result in reputational risk for retailers.

The metrics currently proposed for debt levels and retailer's hardship programs will not readily indicate 'good' or 'bad' retailer performance. For example, whether or not a hardship program is successful is largely subjective, both from the customer's and the retailer's perspective. Without clear guidance on what the AER considers a successful hardship program to look like use of indicators such as whether a former hardship program participant is disconnected within 12 months of successfully leaving the program is likely to mislead. Measuring performance on an indicator such as this wrongly assumes that retailers have (or should be expected to have) a lasting impact on customer behaviour.

Amongst other things, the IT system changes that would be required to accommodate the proposed reporting regime may be costly and time-consuming. These costs will ultimately be borne by end-use consumers. As such, it is important that the AER justify the need for each of the 54 indicators proposed and be clear on their use.

It is not acceptable for the AER to collect data simply on the basis that it 'might be useful' or because some stakeholders are overwhelmingly in favour of it being collected to more

AGL is taking action toward creating a sustainable energy future for our investors, communities and customers. Key actions are:
› Being Australias largest private owner and operator of renewable energy assets
› Gaining accreditation under the National GreenPower Accreditation Program for AGL Green Energy®, AGL Green Living® and AGL Green Spirit
› Being selected as a constituent of the FTSE4Good Index Series

generally inform social policy. Before introducing new reporting requirements, there should be evidence-based analysis to show that the collection of the data will lead to better informed regulatory decision making.

Finally, we note that AGL fully supports the ERAA's submission to the AER on the Position Paper.

Given it appears that the NECF will now not be adopted by any jurisdiction until mid-2012, the AER has sufficient time to address the concerns raised by stakeholders in relation to the proposed performance reporting regime. To this end, AGL would be pleased to meet with representatives of the AER to discuss our concerns.

Should you wish to discuss this submission further, please contact Anna Stewart, Manager Regulatory Policy and Strategy, on (03) 8633 6830 or astewart@agl.com.au.

Yours sincerely

Alex Cruickshank
Head of Energy Regulation

Attachment A

1. Retailer hardship programs – setting realistic expectations

AGL is concerned that realistic expectations are not being set with respect to the extent to which retailers' hardship programs can assist customers facing long term and chronic hardship. The debate seems to have shifted from the 'shared responsibility model', which retailers, community and government sector agreed on several years ago – and the focus is now very much on retailers' processes only. This will be further exacerbated by a performance reporting regime which fails to clearly articulate how retailers' performance in respect to hardship is measured. Similarly, the focus on debt and disconnection levels, as well as retailers' ability to reduce debt, will lead to unfounded and inaccurate assumptions about retailer performance.

2. Frequency of reporting

AGL maintains its strong opposition to the quarterly reporting of the majority of the proposed metrics. This will impose a significant cost burden on retailers, and will lock both the AER and energy retailers into a constant cycle of reporting. In the event that the AER does not view annual reporting as sufficient, AGL encourages the AER to consider bi-annual reporting as an alternative.

In cases of under performance, or where closer monitoring of the market is warranted, the AER may choose to increase the frequency of reporting. Furthermore, reporting from retailers is not the only source from which the AER can gain a view on retailer performance. Ombudsman, for example, are a source of information on retailer performance and complaints data can indicate areas of potential poor performance. It should also be recognised that retailers, on becoming aware of non-compliances, are generally keen to engage with the relevant regulators to solve the issue. Indeed, regulators may actually learn more about a retailers' business processes by actually talking with them, rather than relying on lagging data sets.

3. Comments on specific indicators

While not in support of quarterly reporting, AGL does not oppose the majority of the proposed indicators. However, the AER needs to understand that a number of the indicators are not currently reported on in the jurisdictions, and being new requirements, will therefore necessitate IT system changes. AGL would be happy to discuss the system implications, likely costs and time involved in more detail with the AER.

Having said this, AGL does not support the following indicators in any form and strongly suggests that the AER remove these from the performance reporting regime:

- Debt level performance indicators (A. 2.1.2, A.2.1.3) – these are new indicators and will require significant IT system build. AGL fails to understand how this information, which will be onerous to provide, will be used to indicate how a retailer is performing against its regulatory obligations. Retailers do not have ultimate control over the level of debt carried by their customers, and can only provide assistance with managing energy debt when a customer indicates they require assistance. The fact that the data will be reported on a disaggregated basis (which is clearly necessary given it is commercially sensitive information) gives even greater strength to the argument that this metric is unnecessary. Simply because a retailer has high debt levels in comparison to another retailer does not necessarily indicate that they are not identifying customers in hardship. It may be a reflection of the composition of the customer base, for example, or the retailer's credit management policy or even the prevailing economic climate.

- Multiple disconnections within 24 months (A.3.1.2) – the main reason for our opposition to this indicator is the assumption underlying it – namely, that retailers can somehow influence customer behaviour over an extended period of time. The inference which may be drawn from this indicator, which in our view is wrong, is that the retailer must be failing to detect payment difficulties if a customer is being disconnected multiple times over a 24 month period.

  Some customers may be unwilling to engage with their retailer and admit payment difficulties and it cannot be the sole responsibility of retailers to identify all customers in hardship. Furthermore, for some customers, albeit a small percentage, disconnection may be the only way to prompt engagement.

- Hardship program customer payments and effects on debt: increasing, stable, decreasing (A. 9.1.7): on a practical level, this is a new indicator and will require IT system changes and/or time consuming manual 'work arounds'.

  Perhaps of more concern, however, is the fact that the data relating to this indicator will not reflect the true extent of the assistance being provided through the hardship program. Many retailers, AGL included, provide incentive payments or debt write-offs as part of their hardship program. This may potentially skew the data provided. Another factor to consider is that often when a customer enters a hardship program, their debt level will in fact rise (due to the billing cycle) before it can be brought down to a more manageable level.

  A further concern is how this data may be misinterpreted to suggest that retailers' hardship programs are not effective if they are failing to stabilise or reduce debt. It is not realistic to expect that all hardship program customers can be assisted. There are customers who, due to chronic and long term hardship, are simply unable to meet ongoing consumption costs, yet alone pay off arrears, despite a retailer's best efforts.

- Disconnections/reconnections within a year of leaving hardship program (A.9.1.11 and A.9.1.12): our opposition to these indicators links back to the issue of setting realistic expectations as to the long term influence retailers can have over customer behaviour. AGL would like to think that a customer who leaves our hardship program after paying off their debt and moving to a sustainable consumption/payment pattern will continue on this path. However, AGL ultimately has no control over the customer. Their circumstances could change, due to job loss, illness or a myriad of other factors, none of which we can control. Again, the assumption which may be incorrectly drawn from this data could lead to reputational risk for retailers.

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